

Preliminary Report  
of the  
Federal Order Reform  
Classification Committee  
*Submitted to  
Agricultural Marketing Service  
Dairy Division*

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## INTRODUCTION

The Classification Committee (i.e., “the Committee”) was assigned the job of reviewing those sections of the orders dealing with the classification of milk. These sections include: *fluid milk product, fluid cream product, filled milk, commercial food processing establishment, classes of utilization, shrinkage, classification of transfers and diversions, general classification rules, and classification of producer milk*. In addition, some conforming changes were made in the *producer* and *other source milk* definitions and in the section which describes how to determine a *handler’s value of milk for computing the uniform price*.

This preliminary report provides justification for the Committee’s recommended changes and revisions to current order language, and is accompanied by an appendix consisting of a 2-column compilation showing current order language (with additional language underlined and deleted language struck out) in column 1 and the revised order language in column 2.

The Committee approached its task with the goal of simplifying the order language to make it more understandable. The Committee also sought to remove obsolete language, modernize archaic terms, remove logical inconsistencies, and modify language which was causing a hardship. All of the changes made did not receive unanimous support, but all changes are supported by a majority of the committee.

Based on public input through November 1, 1996, and the available data, the Classification Committee believes the ideas and concepts recommended in this report have merit at this time. The Committee is open to continuous public and Departmental input and may make revisions to this report as additional information becomes available.

## **JUSTIFICATION FOR CHANGES TO CLASSIFICATION OF MILK**

The Committee recommends that the Federal milk order system continue to contain uniform classification provisions. In conformance with the Agricultural Marketing Agreement Act of 1937, all milk should be classified “in accordance with the form in which or the purpose for which it is used.” Although the primary factors for classifying milk should be use and form, other factors such as product labeling and equity among competing handlers should also be considered. The Committee’s primary recommendation is to provide for three separate uniform classes of milk, but five other alternatives are also discussed in the classes of utilization section.

Several Federal order reform comment letters were received regarding the classification of milk. The comments ranged from a suggestion that Federal milk orders be eliminated to various suggestions regarding the classification of individual products. Some comments supported the classification method that the California state order provides and recommended a review of this method.

### **Definitions**

#### **§ 100X.15 Fluid Milk Product**

The Committee recommends that the merged orders include a modified *fluid milk product* definition. The changes to the fluid milk product definition include removing the 6.5% nonfat solids standards, eliminating the term *filled milk*, including eggnog to the list of specified products, and revising the word “buttermilk” to read “cultured buttermilk.” The revised fluid milk product definition should read “any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to, milk, skim milk, low-fat milk, milk drinks, eggnog, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids,

sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.”

The Committee recommends that the *fluid milk product* definition be changed to eliminate the 6.5% nonfat milk solids standard, but retain the 9% butterfat qualifier to distinguish *fluid milk products* from *fluid cream products*. Absent the 6.5% standard, the focus would be on the intended use and the competition in the marketplace for any fluid beverage containing milk or milk products.

The 1974 uniform classification decision defined milk in terms of its product composition and listed specific products that were considered fluid milk products. The product composition standard required that milk products contain by weight at least 80% water and 6.5% nonfat milk solids, and less than 9% butterfat and 20% total solids. The 6.5% nonfat milk solids standard was used to exclude from the fluid milk product definition those products which contained some milk solids but which were not closely identified with the dairy industry, such as chocolate flavored drinks in “pop” bottles. Fluid products containing only a minimal amount of nonfat milk solids were not considered as being in the competitive sphere of the traditional milk beverages.

The 1993 national decision removed the 20% total solids standard. The decision eliminated the standard to remove the incentive to reformulate flavored milk drinks for the sole purpose of obtaining a lower classification (Class II) by increasing the total solids composition of the product to 20% or more. Elimination of the 6.5% solids standard in the fluid milk product definition would resolve a number of consistency issues while advancing the form and use classification criteria. Currently, products that are clearly marketed as a beverage product are being formulated in such a way as to fall just shy of the required 6.5% standard, resulting in a Class II classification for the product. Without the 6.5% standard, milk products used in milkshakes of all types that are consumed as beverages would be classified uniformly in Class I and each milk product would be

classified on the basis of form and use, instead of its solids-not-fat content.

The Committee recommends changing the term “buttermilk” in the fluid milk product definition to read “cultured buttermilk.” The revised term clearly distinguishes the “beverage” buttermilk product from the buttermilk byproduct which is produced from a continuous churning operation.

In addition, the Committee recommends that the fluid milk product definition be modified to include eggnog in its list of products. Although it is apparent that eggnog is a beverage milk product and clearly meets many of the criteria for being considered a fluid milk product, it is not now included in the list of products identified as fluid milk products. The addition of eggnog to the list of fluid milk products results in a change of the product’s classification from a Class II product to a Class I product. The classification change of this product is discussed below under classes of utilization.

The elimination of the term “filled milk” from the fluid milk product definition is discussed later.

None of the comments received regarding the classification of milk discussed or recommended changing the *fluid milk product* definition.

#### **§ 100X.16 Fluid Cream Product**

The Committee recommends that no changes be made to the *fluid cream product* definition. The current definition is uniform under all the orders and should be used in the newly merged orders.

No comment letters were received which suggested changing the current *fluid cream product* definition.

## **§ 100X.17 Filled Milk**

The definition of *filled milk* should be eliminated and the term should be removed from the fluid milk product definition and other provisions within the orders. Filled milk is a product that contains a combination of nonmilk fat or oil with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids). Filled milk was first produced and marketed in the 1960s. In 1968, the orders were amended to provide a definition of filled milk. Currently, there is little or no filled milk being produced under Federal orders. The term filled milk is used 18 times in a milk order. It serves little purpose today except to complicate and lengthen the regulatory language. For this reason, the Committee recommends that the definition of filled milk be eliminated and the term removed from the fluid milk product definition and other provisions within the orders.

The form of filled milk and purpose for which it is used are the same as the form and purpose for which whole milk is used. Filled milk is marketed by handlers in the same types of packages and in the same trade channels as whole milk, and is mainly intended to be used as a beverage substitute for milk. Whether made from vegetable fat and fresh or reconstituted skim milk, or any combination thereof, the resulting product resembles whole milk in appearance. Therefore, any filled milk produced and marketed in the future should be classified as a Class I product under the revised fluid milk product definition.

## **§ 100X.19 Commercial Food Processing Establishment**

The Committee recommends that the definition of *commercial food processing establishment* (CFPE) be revised by removing the filled milk reference, which already has been

discussed, and also by removing the word “bulk” from the definition. The removal of the word “bulk” would allow a CFPE to receive fluid milk products and fluid cream products for Class II use in certain sized packages as well as in bulk.

Presently, the CFPE definition prevents the receipt of fluid milk products for Class II use in relatively small pre-measured packages that might reduce the CFPE’s production costs. Although there were no comment letters directed to this point, this problem has come to the attention of Committee members in their duties administering the orders. While recommending that packaged fluid milk products be permitted to be transferred to a CFPE in any size, the Committee believes that only that milk which is shipped in larger-than-consumer-sized packages (i.e., larger than one gallon) should be eligible for a Class II classification. If milk is received in gallon containers or smaller, the milk should be priced as Class I milk.<sup>1</sup> The Committee also recommends retaining the current restriction barring a CFPE from having any disposition of fluid milk products other than those in consumer-sized packages (one gallon or less).

These two restrictions are based upon practical considerations. The integrity of the classified pricing system would be much more difficult to maintain if the market administrator were forced to audit every CFPE on a regular basis. By prohibiting the sale of fluid milk products in consumer-sized packages to a CFPE for anything but Class I use, there is no need to regularly audit CFPE’s to be sure that such products are not being sold to the public. Similarly, since packaged fluid milk products in containers larger than one gallon are rarely, if ever, found in retail outlets, it is unlikely that such products will be sold for fluid use. By restricting fluid milk product

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<sup>1</sup>The Committee considered the possibility of permitting milk in any sized container to be sold to a CFPE for Class II use if the container had a special label, such as “for commercial food processing use only,” but decided that this idea was impractical and that it would be prohibitively expensive for a handler to prepare specially labeled products for small accounts.

disposition by CFPE's to packaged products not larger than one gallon in size, there is reasonable assurance that milk priced as Class II will not be disposed of as fluid milk sold by the glass from a bulk dispenser.

#### **§ 100X.40 Classes of Utilization**

***Recommendation: The Committee recommends that the orders be amended to provide three uniform classes of milk. (Other Alternatives Discussed Later)***

Historically, the fluid or beverage uses of milk have been classified in the highest-priced class (Class I) and soft or spoonable products, those from which some of the moisture has been removed, have been classified in the intermediate class of milk (Class II). The final decision for the national hearing, which became effective July 1993, provided three uniform classes of milk for all orders. Classes I and II continued the traditional classification of milk, while the lowest-priced class (Class III) contained the hard, storable products. In a final decision that became effective December 1993, a fourth class -- Class III-A (actually a sub-section of Class III) -- was established for most orders for milk used to produce nonfat dry milk.

Comments filed regarding the number of classes of utilization for the newly merged orders varied from supporters of one class, which would eliminate all manufacturing classes, to supporters of five classes of milk. The supporters of two classes of milk recommended that Class I remain unchanged and all other products be classified as Class II products. Two comment letters supported two classes of milk only if the basic formula price is retained. The commentators opposed the addition of an export class of milk which would allow milk prices outside the United States to be priced lower than milk prices within the country. Some comments urged the immediate suspension or termination of Class III-A while others recommended a review of Class



### III-A.

In addition, a cooperative representing a significant number of producers recommended that the revised orders provide four classes of milk. The cooperative suggested that Classes I and II remain unchanged, Class III contain all current Class III products except for butter, and a new Class IV be added to include nonfat dry milk and butter. Another cooperative supported the separate classification for cheese (Class III) and butter and powder (Class IV). Two trade associations recommended five classes of milk for the merged orders. One association recommended that there be five classes (I, II, III, IVA, IVB) and that products be classified on the basis of product yields. The other association proposed five classes of milk consisting of Classes I, IIA, IIB, IIIA, and IIIB, and stated that Classes IIA and IIB should be classified on the basis of protein and butterfat, whereas, Classes IVA and IVB should be classified on the basis of solids not-fat and butterfat.

The Committee recommends that the fluid and beverage uses of milk should continue to be the highest-priced class of milk, Class I, and soft or spoonable products should be classified as Class II products. Class III, the lowest-priced class, should contain the hard and/or storable products, including the hard cheeses, butter, and nonfat dry milk. The Committee recommends that Class III-A be eliminated.

#### *Class I:*

Class I milk should be all skim milk and butterfat contained in milk products that are intended to be consumed in fluid form as beverages. The Committee recommends that Class I contain all the products included as a result of the 1993 uniform classification decision with one exception. The classification of eggnog should be changed from Class II to Class I. The

Committee also suggests that the addition of food starch in excess of 2 percent of the total solids of the product (i.e., the standard currently used to distinguish between the classification of cultured buttermilk and buttermilk biscuit mix) be eliminated and that the basis for determining the classification of these products be based on labeling.

The 1974 uniform classification decision classified eggnog as a Class II product. The decision recognized that eggnog was prepared to be consumed as a beverage and that it was classified in 9 of the 32 orders as a Class I product. However, the decision stated that eggnog was a highly seasonal product with limited sales. It was also estimated that approximately 40 percent of the sales of this product was in the form of imitation eggnog. The decision stated that a Class II classification would enhance the competitive position of the product in the marketplace.

In 1991, the recommended decision of the national hearing changed the classification of eggnog from its historical Class II classification to Class I. However, the 1993 final decision for the proceeding reversed the recommended decision classification. The primary reason for the change in the product's Class I classification back to the historical Class II classification was based on exceptions to the recommended decision that there was no proposal in the notice of hearing to change the classification and no testimony in the record about eggnog. At the same time, however, the final decision left lowfat eggnog as a fluid milk product with a Class I classification.

Class I products are generally classified on the basis of their fluid form and intended use. Eggnog, a highly seasonal product, is clearly intended to be consumed as a beverage. Since this product is manufactured, packaged and distributed to the consumer as a drinkable beverage, the Committee recommends that it be classified as a Class I product. It is the Committee's belief that the seasonal nature of this product and its elasticity of demand is such that a few cents difference

in the cost should have no effect on its sales in the marketplace. Accordingly, it should be reclassified as a Class I product.

Currently, buttermilk is defined as a fluid milk product while skim milk and butterfat used to produce buttermilk biscuit mix is classified as Class II. The 1993 national hearing decision did not provide a basis for differentiating between these two similar products. An administrative decision was made which provided uniform classification and regulatory treatment of the products among all orders. A determination was made to classify a buttermilk product that contains food starch in excess of two percent of the total solids as buttermilk biscuit mix. However, the Committee recommends that the classification of these two similar products remain unchanged but that the more than two percent added starch standard should not be used as the basis for determining the classification of these products.

The added starch for buttermilk biscuit mix is at such a minimal level that it makes the starch-fortified product indistinguishable from “beverage” buttermilk, especially since the starch content cannot be quantified analytically. Unlike cultured buttermilk, which is clearly intended to be consumed as a beverage, buttermilk biscuit mix, like other batter-type products such as coatings, is not intended to be used as a beverage. For these reasons, the Committee recommends that the classification of these products be based on their labeling. Therefore, a product labeled as “cultured buttermilk” should be classified as Class I and a product labeled as “buttermilk biscuit mix,” “buttermilk biscuit blend,” “buttermilk blend for baking,” or other similar language should be classified as a Class II product.

**Class I Used-to-Produce:**

In order to simplify the accountability for milk products classified as Class I that may

contain nonmilk ingredients and/or previously processed and priced skim milk and butterfat, the Committee recommends adding a used-to-produce category to Class I. The used-to-produce accountability method would preclude the need to develop and maintain nonstandard conversion factors and non-milk credits (i.e., salt, flavoring, stabilizers) for milk product accountability. This method should improve the accuracy of handler reporting and minimize audit corrections without sacrificing any statistical information, pricing considerations, or classification criteria.

**Class II:**

The Committee recommends that most products included in Class II as a result of the 1993 uniform classification amendments should continue to be classified as Class II products, with two exceptions. The exceptions include cream cheese, which should be reclassified from a Class III product to a Class II product, and eggnog, as discussed already, which should be reclassified as a Class I product.

The 1993 national hearing decision included cream cheese in Class III. The decision placed spreadable cheeses and cheeses that can be crumbled into separate pieces in Class III, while other more liquid “spoonable” products were placed in Class II. The decision stated that cream cheese is used as a substitute for butter because it functions as a spread and, thus, classified cream cheese in Class III.

The Committee recommends that the classification of cream cheese be changed from Class III to Class II. The milk used in Class II products, generally described as “soft” products, is used to process or manufacture products for which handlers know a consumer demand exists. Generally, these products have some of the water removed from producer milk or contain a high enough butterfat content that they will not be used as beverages. Products included in Class II are

those that are neither as perishable as fluid products nor perform a balancing function for the market. Many Class II products have longer shelf-lives than fluid milk products, while being less storable than markets' surplus uses of milk.

The primary distinction between Class II products and the truly surplus milk uses of the market is existing consumer demand. Although cream cheese sometimes may be used as a substitute for butter, which is a surplus product, it is clearly not a surplus product. It is a consumer convenience product that is produced to meet consumer demand and not to utilize surplus supplies of milk. Handlers do not process milk into perishable or semi-perishable dairy products if they do not have a consumer market for those products. Accordingly, the Committee recommends that cream cheese be reclassified from its' current Class III classification to Class II.

**Class II Used to Produce:**

The 1993 uniform classification amendments changed the accountability method of several products from a disposition basis to a used-to-produce basis. Except for some fluid cream products, all products were moved to the used-to-produce category. The change resulted in simplification and improved accuracy in the reporting, pooling and auditing of these products. We suggest that this method be extended to the remaining Class II products that are accounted for on a disposition basis, specifically creamers, light cream, milk and cream mixtures, and heavy cream.

It is the recommendation of the Committee that the parenthetical phrase "meal replacement" be removed from Section 40(b)(v). The paragraph reads "Formulas especially prepared for infant or dietary use (meal replacement) that are packaged in hermetically sealed containers." The 1993 national hearing decision specifically stated that such Class II classification

would only apply to milk used in formulas that constitute replacements for meals rather than formulas merely having some added vitamins and minerals. The removal of the phrase “meal replacement” will eliminate this factor as a classification criterion. Because the meaning of dietary use may vary from one person to another, the elimination of the phrase “meal replacement” as a classification criterion should provide more consistency in classifying products.

**Class III Milk:**

The July 1993 national hearing decision provided that hard, storable products be included in Class III. Class III-A became effective in three Federal orders in November 1992 and was implemented in 27 Federal orders in December 1993. The amendments established a Class III-A milk class that included only nonfat dry milk. The Committee recommends that the products currently included in Class III continue to be classified in that class with two exceptions. As discussed under the Class II section, the classification of cream cheese should be changed from Class III to Class II. Class III-A should be eliminated and milk used to produce nonfat dry milk should be reclassified from Class III-A to Class III.

Several comment letters suggested that Class III-A be eliminated. Two of those opposed to Class III-A stated that it has been detrimental to dairy farmers. Others argued that the Class III-A product price formula is flawed. Several commentators requested a review of Class III-A, while others urged the Secretary to snub the Class III-A price if the newly merged orders retained a Class III-A. Two commentators recommended that the price difference between Class III and Class III-A should be no more than 75 cents.

One commentator suggested that Class III-A should be eliminated except for sales to the Commodity Credit Corporation (CCC). Another commentator recommended that a Class III-A or

Class IV classification should only be allowed when NFDM is sold to the CCC or exported. The commentor stated that Class III-A has reduced dairy farmers' income.

Another comment regarding classification supported a Class III classification for cheese and a Class IV classification for butter and powder because current market conditions suggest that potential shortages of butter should be considered. The recommendation could possibly have merit. However, the commentor did not provide any data to support its recommendation.

Additional information is needed to further consider and analyze the proposal.

Several comments were received urging the reclassification of sweetened condensed milk from Class II to Class III or to the same class which includes nonfat dry milk. The commentors explained that SCM is primarily used in commercial food processing establishments and in the confections industry and that it is interchangeable with powdered milk products and sugar in ingredient markets for processed foods and candy. They argued that manufacturers of SCM are currently at a competitive disadvantage with manufacturers of nonfat dry milk. Additionally, one commentor stated that it was losing business because NFDM is substantially cheaper than fluid dairy ingredients (SCM).

Recommendations that SCM used in manufacturing be reclassified from Class II to the same class as NFDM should not be adopted if Class III-A is eliminated. The Committee's recommendation to eliminate Class III-A and reclassify milk used to produce nonfat dry milk as Class III removes the significant price difference that has at times existed between Classes II and III-A. This change should allow manufacturers of SCM to equitably compete with manufacturers of NFDM. In the event that the Committee's recommendation to eliminate Class III-A is not adopted, however, the Committee recommends that SCM be reclassified in the same class as NFDM. Further discussion of SCM is addressed below.

The 1993 Class III-A decision stated that the separate class for milk used to produce nonfat dry milk was needed to allow handlers to recover the cost of producing NFDM. The Class III-A price is calculated from a product price formula, which provides a make allowance, to arrive at a price for milk used to produce NFDM.

Class III-A has had an impact on uniform prices in Federal order pool price computations. The regions with the higher proportion of producer receipts used in NFDM production have experienced the greatest impact. The decline in the uniform price in Federal orders has varied between regions. The result has been significant depooling of milk in many Federal orders and a reduction in producers' incomes.

In a draft report by the Basic Formula Price University Study Committee (USC), entitled "An Economic Evaluation of Basic Formula Price Alternatives," the USC concluded that the current Class III-A pricing system is undermining the Class II and Class III price by allowing milk that is manufactured into NFDM at a lower price to be utilized in increasingly large quantities to make soft products and cheese. The USC noted that in the late 1970s and the early 1990s the quantity of NFDM used to make soft products increased when milk supplies were tight. However, the USC stated that since the establishment of Class III-A there has been a sharp increase in the utilization of NFDM used to produce soft products and cheese. The USC indicated that in 1994 the proportion of NFDM used to produce Italian cheese, which is the largest cheese use, could have exceeded 15 percent. Although the USC could not determine the exact quantity of NFDM used to produce soft products, it did indicate that there appeared to be a significant amount.

The USC anticipates that as technology for manufacturing products from dairy ingredients continues to improve, the utilization of NFDM in the production of cheese and Class II products



will continue to increase. The USC stated that the increased demand for NFDM could result in a “distorted, disrupted, and disorderly circular effect that undermines the Federal milk marketing order pricing system as well as the overall efficiency of the milk industry.” Accordingly, the USC concluded that the elimination of Class III-A will allow market forces of competition, rather than administrative edict, to play a greater role in allocating supplies.

One solution to the problem of disposing of seasonal surpluses in markets which do not have the flexibility of processing surplus milk into cheese is to provide marketwide service payments to operators of butter/powder plants to cover the costs of performing the balancing function of milk supplies in excess of the fluid needs of the market. The payments would permit manufacturers of butter and powder in these seasonally surplus markets to compete with unregulated butter-powder plants or those plants in California when the market price for nonfat dry milk was insufficient to cover a competitively-determined basic formula price that was based, in part, on the prices paid by cheese plants.

The Classification Committee concurs with the conclusions of the USC and recommends that Class III-A be eliminated. If, despite this recommendation, it is decided that a separate classification (i.e., Class IV) for nonfat dry milk and other products should be adopted, the Committee respectfully suggests that the following options be considered: 1) snub the Class IV price; 2) provide for seasonal Class IV pricing; 3) limit Class IV pricing to certain markets; 4) provide an up-charge on reconstituted NFDM used to produce Class II and Class III products; or 5) some combination of the above options.

***Alternative #1: The Committee suggests that the newly merged orders provide four separate uniform classes of milk. However, the price difference between Class III and Class IV should***

*be limited.*

Should the Committee's primary recommendation be rejected, the Committee recommends that the fluid and beverage uses of milk should continue to be the highest-priced class of milk and soft products should continue to be classified as Class II products. Class III and Class IV should contain the hard, storable products. Currently, Class III-A milk is allocated in combination with Class III milk rather than as a separate class when determining the classification of producer milk. The Committee recommends that Class III-A be eliminated and a separate class be established (Class IV).

The Committee further suggests that the fourth class of use be expanded to include not only nonfat dry milk but all other dry milk products, such as whole milk powder, that can be reconstituted as fluid milk products. Both of these products exist in dry powdered form, and serve the function of storing milk solids for later use in a variety of fluid products. Both products take the same form and are used for similar purposes. Therefore, whole milk powder should be reclassified from Class III to Class IV. In addition, for the reasons previously stated, the Committee believes that bulk sweetened condensed milk also should be priced to be competitive with other Class IV products.

The need for a separate classification and price for milk used to produce dry milk solids was explained in the Class III-A decisions. As stated in the decisions, market prices for butter and NFDM tend to remain low relative to cheese prices. (However, as market prices in 1996 have shown, this is not always the case.) When there is a substantial difference between the market price for cheese and the value of milk used to produce butter and NFDM, cooperatives and other market suppliers attempt to direct their reserve milk supplies to the most profitable outlet. In certain markets, cooperatives have limited opportunity to do this because there are no local

cheese plants or nearby plants do not have sufficient capacity available. As a result, the surplus supplies of milk are shipped to butter-powder processing plants which, at times, provide lower returns from the marketplace than competing cheese plants. The Committee recommends milk used to produce nonfat dry milk and whole milk powder be classified as Class IV because the market value of milk used to produce these products is sometimes different than milk used to produce cheese and butter. The Class IV classification of nonfat dry milk and whole milk powder will allow manufacturers to recover the cost of producing such a product.

Class III-A has had an impact on uniform prices in Federal order pool price computations and, in particular, it has reduced producer income by replacing fresh fluid milk in higher-valued products. Moreover, as pointed out by the USC, this causes a circular effect because the production of more powder tends to drive down the price of powder which provides more incentive to substitute powder for fluid milk. For these reasons, the Committee recommends that the Class IV price be snubbed.

The Class IV price should not be allowed to fall more than 75 cents (the cost of manufacturing) below the Class III price. This will remove any competitive incentive that may currently exist to manufacture nonfat dry milk as a replacement for fresh milk in a higher-valued product. It should also reduce the loss to dairy farmers.

The Committee also suggests that sweetened condensed milk (SCM) used in manufacturing be reclassified from Class II to Class IV. SCM is used primarily as an ingredient in other food products. It has a long shelf-life with or without special packaging. Since SCM competes with nonfat dry milk, which is a surplus product, it should be classified in the same class.

The 1993 classification decision which classified SCM used in manufacturing as Class II

acknowledged that NFDM could be used as a substitute product. The decision stated that the price difference that existed between the two products was of such a small percentage that handlers using the custom-tailored product (SCM), as opposed to NFDM, would continue to use it. With the incorporation of Class III-A, however, the price difference between the two products has widened and handlers using SCM, as opposed to NFDM, are being placed at a competitive disadvantage. According to one comment letter, with the existence of Class III-A, the difference in the cost of milk used to make NFDM and fluid dairy ingredients has averaged approximately \$2.00/cwt. The Committee believes that pricing milk used to produce NFDM substantially cheaper than competing intermediate fluid dairy ingredients is unfair to processors of those ingredients and results in a distortion of the market. Therefore, in the absence of NFDM classified as Class III, the Committee recommends that SCM and NFDM be in the same class. This would prevent the classification distinction which results in a competitive disadvantage for the SCM processor, while at the same time providing for greater equity between handlers producing SCM and those producing NFDM.

#### ***Alternative # 2: Seasonal Class IV***

The Committee suggests a second alternative which would provide for seasonal Class IV pricing. A seasonal Class IV would provide a separate class in the merged orders for milk used to produce nonfat dry milk and whole milk powder on a seasonal basis. The separate class would only be functional during the flush production period of February through May. This alternative would provide an incentive to manufacture dry milk powders during a period when the markets' milk supply is in excess of fluid needs. It would also remove any incentive that may currently exist to produce dry milk powder only because it is cheaper than fresh milk for use in a higher

valued product.

***Alternative #3: Limit Class IV to Certain Markets***

The Committee suggests that the newly merged orders provide four separate uniform classes of milk, but that Class IV only be included in orders in which there is a significant amount of dry milk powder being produced. Marketing areas in which there are no cheese plants and the only outlet for surplus milk is butter/powder plants should also contain a Class IV. As discussed above, Class IV would include nonfat dry milk, whole milk powder, and SCM used in manufacturing.

The inclusion of this separate class in the Pacific Northwest will enable manufacturers in this region to compete more equitably with California. The Western United States is the dominant NFDM-producing region. For example, in 1995, Federal milk orders in the West Region accounted for 245 million pounds of milk used to produce nonfat dry milk, as opposed to the East and Midwest regions which accounted for 101 million and 120 million, respectively.

There is no justification to include Class IV in those orders in which there is a small volume of surplus milk currently being produced. In those markets, a marketwide service payment would be of greater benefit than a separate Class IV. The incorporation of a separate Class IV in such markets could create an incentive to increase production of dry milk powder or displace milk that traditionally has been shipped to a cheese plant. A marketwide service payment, on the other hand, would allow manufacturers of dry milk powder and cheese to compete for the highest use value of raw milk.

***Alternative #4: Up-charge on reconstituted NFDM used to produce Class II and III products.***

The Committee recommends that the newly merged orders provide an up-charge on reconstituted NFDM used to produce Class II and Class III. The up-charge would be the difference between the Class IV price and the Class II or III price, respectively, depending upon how the powder was used. The up-class charge should resolve the problems that currently exist regarding the use of NFDM in the production of Class II and Class III products. The up-charge should allow market conditions to play a greater role in allocating supplies of milk. This alternative will also provide greater equity between manufacturers of Class II, Class III, and Class IV products. However, the institution of an up-charge would increase the level of regulation, and add to audit and verification procedures.

***Alternative #5: Combination of the previous alternatives.***

The Committee suggests that a combination of the above alternatives may provide another viable option. The incorporation of Class IV pricing in certain markets may be accompanied by a Class IV “snubber.” This would maintain the competitiveness of butter-powder plants in markets with large volumes of dry powder products, but also place a limit on the price difference between Class III and IV.

Another option would be to incorporate seasonal Class IV classification with a system of marketwide service payments. These payments would be given to operators of butter-powder plants to cover the costs of performing the balancing functions of milk supplies in excess of the fluid needs of the markets during high production periods.

**§ 100X.41 Shrinkage and Overage**

The Committee recommends that the shrinkage provision be modified in all Federal milk

marketing orders to reflect a pro rata assignment of shrinkage based on handler utilization.

Adoption of such modification will simplify both order language and accounting procedures. A shift from the current shrinkage allowance provisions to a pro rata assignment of shrinkage based on utilization will improve market efficiencies, create a more equitable situation among handlers, and facilitate accounting procedures involving shrinkage and overage assignment.

Over time, as milk orders matured, changing conditions within milk markets have led to the adoption of a rather complex shrinkage provision. This provision can be both modified and simplified without compromising the objectives of the Federal milk marketing program. After considering and reviewing existing alternatives to the current shrinkage provision, the Committee believes that its recommendation will best meet the requirements of simplification and improvement of Federal milk marketing orders.

Shrinkage is experienced by handlers in milk processing operations and in the receipt of farm bulk tank milk at receiving stations and processing plants. Milk is unavoidably lost as it remains in pipe lines, adheres to tanker walls and/or other plant equipment, and is washed away in the cleaning operations. In addition, unexpected losses, including spillage or leaking packages, also contribute to shrinkage.

Arguments in support of the Committee's recommendation illustrate the advantages of a shift to pro rata shrinkage assignment as opposed to either continuation of the current shrinkage class assignment and allocation system or adoption of other alternatives. Additionally, an integral part of this reform process involves comments and suggestions submitted on behalf of industry members and other interested parties.

Comments received from interested parties involving shrinkage varied in how to deal with this issue, and all suggestions were carefully considered by the Committee. The range of

suggestions included simplification of the orders by eliminating the shrinkage provision to the assignment of all shrinkage to Class I.

Simplification of order language is one of the more frequently suggested comments, and the shrinkage provision undoubtedly falls within this category. As pointed out earlier, the shrinkage provision has become rather complex. A comment letter submitted by one industry member argues that the retainment of the shrinkage provision is unnecessary. Any milk which is not accounted for should be classified as Class I. Furthermore, it has been suggested that the elimination of the shrinkage provision would no longer require Class I disposition audits. While this suggestion seems to provide an incentive to inefficient plant operators to minimize the amount of milk loss by placing a higher value on shrinkage than presently exists in the current system, a more equitable method is to assign shrinkage pro rata based on a handler's utilization. This will prevent any handler with solely Class III utilization from being responsible to the pool for shrinkage assigned to Class I.

Other comment letters suggested that shrinkage should be eliminated, along with some other order provisions, because it reduces income to dairy farmers. Some commentators argued that the costs associated with record keeping, reporting and auditing of shrinkage has little value to the producer, consumer, or handler. The requirements regarding animal feed seem to provide additional work both for the handler and the market administrator's office which is unnecessary. It is the Committee's opinion that the suggestions to eliminate animal feed language in the orders contain merit for the reasons stated above.

In Section 30 of each order, each pool plant operator and each cooperative association acting as a handler pursuant to Section 9(b) or (c) are required to report their total receipts and disposition of skim milk and butterfat. In Section 40, the total receipts so reported are classified



according to usage. Any positive difference between receipts and utilization is referred to as *shrinkage* and any negative difference is called *overage*. The Committee recommends that for each pool plant and each 9(c) handler<sup>2</sup>, the market administrator shall determine the shrinkage or overage as explained above, and then assign pro rata the shrinkage to the respective quantities of skim milk and butterfat in each class by using the handler's total utilization. In contrast to the current lengthy provision for assigning shrinkage, the new shrinkage provision will remove the necessity for computing shrinkage allowances on various sources of receipts.

Currently, shrinkage provisions maintain allowances for various sources of receipts. Milk that a handler receives at its plant on the basis of weights determined from its measurement at the farm and butterfat tests determined from bulk tank samples (farm weights and test) receives a 2 percent allowance to be classified as Class III. If the handler receives milk on other than farm weights and tests from a 9(c) handler or another pool plant, a 1.5 percent allowance is given to the receiving handler and a 0.5 percent shrinkage allowance is given to the 9(c) handler or other pool plant selling the milk. Any shrinkage assigned to pooled milk is assigned to Class III up to this allowance.

If a handler receives fluid *other source milk*, it receives a pro rata share of the total loss which is assigned to Class III without limit. Any shrinkage exceeding the total of these two assignments is assigned to Class I.

When comparing the dairy industry to other industries, there is a difference in how waste, or shrinkage, is handled. A non-dairy manufacturing plant has a certain amount of waste, and it pays the same for wasted material as that going into the product made. It does not pay less or

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<sup>2</sup>The order language attached to this report contains no reference to a 9(b) handler. This was done intentionally to conform with a recommendation of the Identical Provisions Committee to combine the 9(b) and 9(c) handler definitions into Section 9(c).

assign a lower value for the “shrinkage” as is done in the dairy industry. Although some may argue that shrinkage should be assigned to the lowest class because handlers receive no return on milk losses experienced in the receiving and processing operations, a pro rata assignment should result in handlers’ limiting milk loss throughout the dairy process. In a bottling plant, shrinkage would be assigned to Class I in a larger proportion than the current method. This would have the effect of creating more costs for a Class I handler. In other words, placing a higher value on shrinkage by having milk assigned pro rata to all classes, as is recommended, will encourage a handler to reduce costs associated with shrinkage, resulting in more efficient dairy operations. Also, as proposed here, shrinkage would be assigned to Class II for the first time. This would also encourage less shrinkage, hence, greater efficiency.

Pro-rata shrinkage assignment would more closely reflect the nature of the plant’s operation. If milk is to be classified on the basis of form and use, it would appear logical that any loss associated with a particular use should be classified the same as the usage. Since handlers’ operations are different regarding the amount of milk utilized in each class, the Committee’s recommendation of assigning shrinkage recognizes these differences. Shrinkage would be prorated according to each handler’s utilization. If a handler has a high Class I utilization, it seems appropriate that the same utilization percentage would apply to its loss/shrinkage. A handler with a multi-class operation would have shrinkage prorated to all classes of utilization based on the percentage used in each class. If a handler has only Class III utilization, all shrinkage would be assigned to Class III. This is currently not true for a Class III handler. If such handler has excess shrinkage as computed under the current method, it is assigned to Class I. This may be the only Class I use the handler has. If such handler had perfect accounting, the highest possible use would be Class III.

In doing its cost accounting for Class I fluid milk, a handler would have to factor in the extra cost for shrinkage as part of its calculations. Such handler would feel secure knowing that its competition is going to have the same method of prorating shrinkage applied to its operation. The benefit of greater uniformity is apparent. Class I handlers would have a greater incentive to operate more efficiently if they are to account for milk lost at the higher class value; hence, greater consideration would be given to minimizing shrinkage to reduce costs. In addition, the incentive to “hide” Class I sales by taking advantage of the maximum allowance of Class III shrinkage will not exist.

The additional money paid into the pool by handlers operating pool distributing plants with high Class I utilization would not be offset by a lesser amount paid into the pool by handlers operating plants that manufacture primarily Class II and III products. Therefore, the blend price to producers would be enhanced by this change in the shrinkage rules, but it is estimated that it would be less than an average of one cent per cwt.

Historically, overage has been allocated pursuant to Section 44 (Classification of producer milk) starting with Class III. Since shrinkage would be assigned pro rata based on the utilization in each class, it would appear logical to assign overage on the same basis. Utilization would be adjusted to arrive at gross utilization. The references to overage and shrinkage would be removed from Section 44. In computing a handler's value of milk, the method of pricing overage in Section 60(b) would not change. However, the reference to Section 44(a)(14) and 44(b) would be replaced with Section 43.<sup>3</sup> There would be minimal or no impact on the blend price by assigning overage before allocation begins rather than in the current step 14 of Section 44.

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<sup>3</sup>As explained under the discussion of “General classification rules,” the Committee recommends removing Section 41 entirely and incorporating the remaining shrinkage provision in Section 43; hence, the reference to Section 43.

The total value of milk classified plus the overage value would be the same using either method. However, if a handler had receipts from an unregulated supply plant or an other order plant, the assignment of such receipts may be slightly different than the current assignment method.

The Committee also recommends that animal feed and dumped products be removed from Class III and be included in shrinkage. This would place less of a regulatory burden on handlers who are required to file reports regarding these types of disposition. This language would be eliminated from Section 40 (Classes of utilization). It would also simplify market administrator auditing procedure considerably.

The suggestion to include a dollar credit at the difference between Class III and Class I prices for unaccounted milk was also considered. This alternative would result in additional time and resource allocation, and would not simplify the orders, but rather complicate them. The Committee believes that the proration recommendation is the better alternative.

#### **§ 100X.42 Classification of Transfers and Diversions**

The Committee recommends that certain changes to the classification of transfers and diversions section be adopted to simplify and clarify order language. At the present time, milk cannot be diverted from one order to another for Class I use. Consequently, virtually all milk diverted between orders is on a requested Class II or III basis. In fact, if any diverted milk is allocated to Class I, it is no longer diverted milk; it becomes producer milk under the receiving order.

With the large modern dairy farms now increasingly common throughout the nation, it is not unusual to find single farms that can fill up an entire over-the-road tank truck. Also, it is now

common to have milk moving directly from a farm to a plant hundreds of miles away. In view of these changes in milk marketing, it no longer makes sense to restrict milk from moving on a diverted basis for Class I use. By removing this restriction, a handler has the flexibility to supply another market's Class I needs without losing the payroll responsibilities for the producers whose milk was diverted. It would also prevent a dairy farmer from becoming a "producer" under an order with which he or she is not normally associated.<sup>4</sup>

It is probable that in most cases it would be more economical to supply another market's Class I needs on a transfer basis or by sending in milk directly as producer milk rather than as milk diverted for Class I use. This is likely because diverted milk is generally priced at the plant to which diverted based upon the diverting order's uniform price (which is likely to be lower than the uniform price under the order to which the milk is diverted), and, finally, because the location adjustments applicable to the diverted milk are not likely to cover the actual transportation cost of moving the milk. Thus, it is not likely that permitting Class I diversions will result in a drastic transfer of utilization from the receiving market to the shipping market. Nevertheless, the inclusion of this recommendation in the newly merged orders is desirable because it provides additional regulatory flexibility for handlers in satisfying a market's needs for supplemental milk for Class I use.

Milk that is diverted from one order to another order for Class I use should be allocated to Class I use in the same manner as milk that is transferred between orders for Class I use. It should be allocated to Class I based upon the lower of the receiving market's Class I utilization or

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<sup>4</sup>A conforming change to the producer section of most orders is necessary in connection with the recommendation to permit milk to be diverted for Class I use. At present, most orders contain a paragraph similar to § 1007.12(b)(4) of the Southeast order which excludes a dairy farmer from "producer" status if any milk of that dairy farmer is diverted to another order for Class I use. This paragraph should be removed.

the receiving plant's Class I utilization. The presumption behind this provision is that milk from another order should share in the plant's Class I utilization, but it should not share in the receiving order's Class I utilization to a greater extent than the producers in that order. Therefore, if the receiving handler had a Class I utilization of 90 percent, but the marketwide Class I utilization was only 75 percent, any milk transferred or diverted to the receiving handler for Class I use would be allocated to Class I according to the lower marketwide Class I utilization (i.e., 75 percent).

Another change that should be made in each order relates to milk that is transferred or diverted for Class II or III use. Presently, milk may be transferred or diverted on a requested Class II or III basis. However, if more than 3 classes of utilization are incorporated in the orders, this will have to be changed. Rather than specifying "Class II, III, or IV, etc.," however, the Committee recommends simply stating "other than Class I" to accommodate a system of more than 3 classes. This language is simpler, shorter, and accomplishes the same end.

Comments received from interested parties involving transfers and diversions suggested general simplification and clarification of order language, as well as some suggestions on how to facilitate the administration of these provisions. However, detailed justifications or reasoning for such changes were not provided in these comments. The Committee acknowledges that the transfers and diversions section is one of the more complicated and complex sections within milk marketing orders, and has considered the suggestions made by various parties to simplify this section.

Generally, the comment letters suggest that the orders be amended so that inter-market transfers are allocated to Class I in the same manner as transfers within markets. These letters state that, otherwise, a barrier to the movement of milk is created. It is argued that such

modification would help to assure distributing plants an adequate supply of milk for fluid use whenever and wherever it is needed. Other comments argued it is only logical and fair that if a shipment between orders is designated as Class I, the entire shipment should be Class I, and not be subject to current pro rata allocation procedures. They argued that this would lead to a more equitable situation in the treatment of inter and intra-order transfers, allow for greater equity among handlers, and contribute to the simplification and reduction of administrative procedure and cost.

The Committee recommends that inter-order transfers or diversions continue to be allocated based on the lower of the receiving plant's or receiving market's utilization rate. There is no justifiable reason to permit other order bulk milk for Class I use to be classified at a higher utilization rate than is actually given to producer milk in the receiving market. Preference should not be given to such other order bulk milk in the manner suggested by various commentators. Even within markets with high Class I utilization rates, there are times when milk is used in surplus products, therefore classified in Class II or III. There is no reason why milk from an other order should be classified as completely Class I when local milk inevitably is classified other than Class I. Both types of receipts should share equally in the Class I and surplus utilization.

In § 100X.42(d)(2)(i), the Committee recommends that the phrase, *excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month*, be added to this sub-paragraph to more accurately arrive at transfer and diversion classification on the basis of the assignment of a nonpool plant's utilization to its receipts. The recommended modification will no longer inflate the Class III utilization by unnecessarily including the skim equivalent pounds. In classifying receipts of fluid milk and cream products at nonpool plants from federal order plants, an accounting balance function serves no purpose.

In § 100X.42(d)(2)(vi), the Committee recommends that the allocation process for bulk fluid milk from pool plants at nonpool plants be modified such that any remaining unassigned receipts of bulk fluid products be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then Class III, and then to Class II. This assignment sequence returns the order language that was adopted in the Uniform Classification Decision of 1974. There is no justifiable reason why preference should be given to receipts from pool plants by assigning such milk to the available Class II use before assigning receipts from dairy farmers who constitute the regular source of milk for such nonpool plant. Generally, milk transferred or diverted from pool plants to nonpool plants is surplus milk and would be used in storable manufactured products, such as nonfat dry milk and butter. By assigning transferred or diverted milk to a nonpool plant's Class II utilization first, the pool plant operator is forced to account for this milk at the Class II price, even though the nonfat dry milk or other surplus product that was made with the milk is of a lesser value. Therefore, once a nonpool plant's Class I utilization is reached, any remaining receipts from a pool plant should be assigned to Class III and then Class II. This will prevent the assignment of receipts at a higher utilization than the actual utilization.

Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants, similarly, should be assigned to the lowest class utilization first. Generally, a plant operator will use his/her regular source of supply in the highest valued uses before using alternative supplies. Therefore, if a nonpool plant receives cream from a pool plant or other order plant, it is likely that the pool plant or other order plant was trying to dispose of the excess cream. The nonpool plant receiving the cream will most likely use it for manufacturing purposes; therefore, it should be assigned to the lowest class first. The priority given to regular source



supplies is recognized and the provision modified to reflect this.

#### **§ 100X.43 General classification rules.**

The Committee recommends that, for classification purposes, the milk of a cooperative bulk tank handler--i.e., “a 9(c) handler”--be treated as “producer milk” of a pool plant operator. This change will shorten and simplify the allocation section. Accordingly, paragraph (a) of this section, as revised, no longer contains a reference to the classification of producer milk with respect to a handler described in 9(c).

The computation and classification of shrinkage and overage have been added to this section. This will eliminate Section 41, the section previously used for this purpose. Also, the last paragraph of Section 43 has been removed as a result of the Committee’s recommendation to remove Class III-A.

#### **§ 100X.44 Classification of producer milk.**

A handler may receive milk from a producer, a cooperative association acting as a handler on bulk tank milk, by transfer from another pool plant, or from “other sources” such as nonpool plants, partially regulated plants, and plants that are regulated under other orders. Because of this diversity in sources of receipt, it is necessary in a milk order to go through an allocation sequence to determine which source of milk gets priority to a particular class of utilization.

Section 44 is one of the most complicated and difficult-to-understand sections in a milk order. A layman would have virtually no chance of understanding it and even people that work with it find it difficult to comprehend. Consequently, the Committee sought to simplify and shorten this section in an attempt to overcome some of its shortcomings. Part of this task was

made easier by changes to other sections (e.g., elimination of filled milk, elimination of individual handler pools, and modification of the treatment of inter-order transfers and diversions). Also, because shrinkage and overage are prorated to a handler's gross utilization, these items do not have to be allocated.

All orders are not now uniform in the classification of producer milk. For example, some orders (e.g., Chicago Regional) provide for system allocation, but most orders allocate receipts on a plant-by-plant basis for a multiple plant handler.

The Committee recommends the use of plant-by-plant allocation, as modified to reflect the other changes discussed in this report. The system allocation method that is found in some orders today is based upon a set of presumptions concerning the locations of handlers' plants and the market's available milk supply in relation to those plants. It presumes that the milk closest to the market's highest-priced area--which was "the market center" in the classical milk pricing model--should be used first for fluid use and that more distant plants of a handler should process milk for manufactured products. It also presumes that a multiple plant handler that manufactures Class II or III products in one of its plants should redirect that milk to Class I use at another of its plants before it imports unregulated milk for fluid use.

The dozen or so milk markets of the next century will not fit within the parameters of the classical model. A marketing area that spans several states may have many "market centers." It also may have pockets of milk that are in higher-priced areas than some of the fluid milk plants within the marketing area. This milk may not be economically available to a fluid milk plant several hundred miles away. In fact, it may be that a plant near the periphery of a multi-state market may find its closest and cheapest source of supply from outside the market rather than within the marketing area. Accordingly, the foundation on which the system allocation rules are

based will not support the significantly different market structure of the 21st century. It is for this reason that the Committee recommends that all orders be modified to allocate milk only on a plant-by-plant basis rather than on a system basis.

Another change that should be made in the allocation section concerns the “98/2” rule. At the present time, only 98 percent of the packaged fluid milk products transferred between orders is allocated to Class I; the remaining 2 percent is allocated to Class III. This provision, originating from the June 19, 1964, “compensatory payment” decision, was adopted to provide an allowance for “route returns.” According to that decision, “it is reasonable to expect some route returns will be associated with inter-market transfers just as there are in connection with milk locally processed in the receiving market...a small allowance of 2 percent for such returns, which must fall into surplus use, should be included to avoid such over-assignment in Class I.” (29 FR 9120).

The Committee is recommending that the 2 percent Class III allowance on inter-market packaged transfers be eliminated. As explained above in connection with the recommended changes to the shrinkage provisions, animal feed and dumped products (i.e., route returns) would no longer receive an automatic Class III classification in Section 40 (Classes of utilization), but would instead be treated as shrinkage and prorated to the plant’s utilization. Similarly, inter-order packaged transfers should no longer receive an automatic Class III classification for 2 percent of those transfers but should instead be allocated 100 percent to Class I utilization.

In addition to the changes discussed above, the Committee has sought to shorten and simplify Section 44 by removing unnecessary references that serve to confuse the language rather than make it easier to understand. For example, if in Step 8 of the allocation sequence one is directed to subtract certain receipts that were not subtracted in “paragraphs (a)(2)(i), (7)(v), and

(8)(i) of this section”--where paragraphs (a)(2)(i), (7)(v), and (8)(i) represent *all* of the subtractions of that type of receipt thus far--the Committee recommends simply stating, instead, “that were not previously subtracted in this section.”

#### **Conforming Changes to Other Sections: §§ 100X.12, 100X.14, 100X.41, and 100X.60**

In addition to removing § 100X.12(b)(4) for the reasons previously discussed in footnote 4, other sections should be modified to conform with the Committee’s recommendations. Highlighting the most significant of these changes, paragraph (b) of § 100X.14 should be removed to reflect the fact that all packaged fluid cream products now would be accounted for on a used-to-produce basis. Also as previously noted, the Committee’s recommendation to prorate shrinkage will shorten the existing provision to the point where it no longer makes sense to keep a separate section for it. Therefore, the Committee recommends that Section 41 be eliminated and the revised contents of that section be incorporated as a new paragraph (b) in Section 43. Finally, conforming changes should be made to Section 60 (Handler's value of milk for computing the uniform price) to reflect the elimination of filled milk from the order, and changes in references due to other modifications such as the changes in the treatment of shrinkage and overage.

# **Attachment 1**

MODIFIED  
CURRENT ORDER LANGUAGE  
AND  
REVISED ORDER LANGUAGE

**MODIFIED**  
**CURRENT ORDER LANGUAGE**

**DEFINITIONS**

- 100X.2 (Marketing area.)
- 100X.3 Route disposition.
- 100X.4 Plant.
- 100X.5 Distributing plant.
- 100X.6 Supply plant.
- 100X.7 Pool plant.
- 100X.8 Nonpool plant.
- 100X.9 Handler.
- 100X.10 Producer-handler.
- ~~100X.11 [Removed]~~
- 100X.12 Producer.
- 100X.13 Producer milk.
- 100X.14 Other source milk.
- 100X.15 Fluid milk product.
- 100X.16 Fluid cream product.
- ~~100X.17 Filled milk. [Removed]~~
- 100X.18 Cooperative association.
- 100X.19 Commercial food processing establishment.

**HANDLER REPORTS**

- 100X.30 Reports of receipts and utilization.
- 100X.31 Payroll reports.
- 100X.32 Other reports.

**CLASSIFICATION OF MILK**

- 100X.40 Classes of utilization.
- ~~100X.41 Shrinkage. [Removed]~~
- 100X.42 Classification of transfers and diversions.
- 100X.43 General classification rules.
- 100X.44 Classification of producer milk.
- 100X.45 Market administrator's reports and announcements concerning classification.

**CLASS PRICES**

- 100X.50 Class prices.
- 100X.51 Basic formula price.
- 100X.52 Plant location adjustments for handlers.
- 100X.53 Announcement of class prices.
- 100X.54 Equivalent price.

**UNIFORM PRICES**

- 100X.60 Handler's value of milk for computing the uniform price.
- 100X.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
- 100X.62 Announcement of uniform prices and butterfat differential.

**REVISED ORDER LANGUAGE**

**DEFINITIONS**

- 100X.2 (Marketing area.)
- 100X.3 Route disposition
- 100X.4 Plant.
- 100X.5 Distributing plant.
- 100X.6 Supply plant.
- 100X.7 Pool plant.
- 100X.8 Nonpool plant.
- 100X.9 Handler.
- 100X.10 Producer-handler.
- 100X.12 Producer.
- 100X.13 Producer milk.
- 100X.14 Other source milk.
- 100X.15 Fluid milk product.
- 100X.16 Fluid cream product.
- 100X.18 Cooperative association.
- 100X.19 Commercial food processing establishment.

**HANDLER REPORTS**

- 100X.30 Reports of receipts and utilization.
- 100X.31 Payroll reports.
- 100X.32 Other reports.

**CLASSIFICATION OF MILK**

- 100X.40 Classes of utilization.
- 100X.42 Classification of transfers and diversions.
- 100X.43 General classification rules.
- 100X.44 Classification of producer milk.
- 100X.45 Market administrator's reports and announcements concerning classification.

**CLASS PRICES**

- 100X.50 Class prices.
- 100X.51 Basic formula price.
- 100X.52 Plant location adjustments for handlers.
- 100X.53 Announcement of class prices.
- 100X.54 Equivalent price.

**UNIFORM PRICES**

- 100X.60 Handler's value of milk for computing the uniform price.
- 100X.61 Computation of uniform price (including weighted average price).
- 100X.62 Announcement of uniform prices and butterfat differential.

***MODIFIED***  
***CURRENT ORDER LANGUAGE***

**PAYMENTS FOR MILK**

- 100X.70 Producer-settlement fund.
- 100X.71 Payments to the producer-settlement fund.
- 100X.72 Payments from the producer-settlement fund.
- 100X.73 Payments to producers and to cooperative associations.
- 100X.74 Butterfat differential.
- 100X.75 Plant location adjustments for producers and on nonpool milk.
- 100X.76 Payments by a handler operating a partially regulated distributing plant.
- 100X.77 Adjustment of accounts.
- 100X.78 Charges on overdue accounts.

**ADMINISTRATIVE ASSESSMENT AND  
MARKETING SERVICE DEDUCTION**

- 100X.85 Assessment for order administration.
- 100X.86 Deduction for marketing services.

**Authority: 7 U.S.C. 601 - 674.**

***REVISED ORDER LANGUAGE***

**PAYMENTS FOR MILK**

- 100X.70 Producer-settlement fund.
- 100X.71 Payments to the producer-settlement fund.
- 100X.72 Payments from the producer-settlement fund.
- 100X.73 Payments to producers and to cooperative associations.
- 100X.74 Butterfat differential.
- 100X.75 Plant location adjustments for producers and on nonpool milk associations
- 100X.76 Payments by a handler operating a partially regulated distributing plant.
- 100X.77 Adjustment of accounts.
- 100X.78 Charges on overdue accounts.

**ADMINISTRATIVE ASSESSMENT AND  
MARKETING SERVICE DEDUCTION**

- 100X.85 Assessment for order administration.
- 100X.86 Deduction for marketing services.

**Authority: 7 U.S.C. 601 - 674.**

**MODIFIED**  
**CURRENT ORDER LANGUAGE**

**§100X.12 Producer.**

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to §100X.13; and

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to §100X.44(a)(8)(iii) and the corresponding step of §100X.44(b); or

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

**§1007.14 Other source milk.**

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products specified in §100X.40(b)(1) from any source other than producers, ~~a~~ handlers described in §100X.9(c), or pool plants;

~~(b) Receipts in packaged form from other plants of products specified in §100X.40(b)(1);~~

~~(c)~~ (b) Products (other than fluid milk products, fluid cream products specified in §100X.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

**REVISED ORDER LANGUAGE**

**§100X.12 Producer.**

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to §100X.13; and

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order.

**§1007.14 Other source milk.**

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in §100X.9(c), or pool plants;

(b) Products (other than fluid milk products, fluid cream products , and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and



**MODIFIED**  
**CURRENT ORDER LANGUAGE**

~~(d)(c)~~ Receipts of any milk product (other than a fluid milk product or a fluid cream product ~~specified in §100X.40(b)(4)~~) for which the handler fails to establish a disposition.

**§ 100X.15 Fluid milk product**

(a) Except as provided in paragraph (b) of this section, fluid milk product means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are ~~in bulk or are packaged, distributed and~~ intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, eggnog, and cultured buttermilk, ~~and filled milk~~, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, ~~any product that contains by weight less than 6.5 percent nonfat milk solids~~, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than ~~in excess of the quantity of skim milk in~~ an equal volume of an unmodified product of the same nature and butterfat content.

**§100X.16 Fluid cream product.**

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**REVISED ORDER LANGUAGE**

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

**§ 100X.15 Fluid milk product**

(a) Except as provided in paragraph (b) of this section, fluid milk product means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

**§100X.16 Fluid cream product.**

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

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**~~§100X.17 Filled milk:~~**

~~Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).~~

**§100X.19 Commercial food processing establishment.**

Commercial food processing establishment means any facility, other than a milk ~~or filled milk~~ plant, to which ~~bulk~~ fluid milk products and ~~bulk~~ fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products, and has no other disposition of fluid milk products other than in consumer type packages (1 gallon or less) ~~or fluid cream products other than those that it received in consumer type packages~~. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, provisions in §§100X.13, ~~100X.41~~, and 100X.52.

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**§100X.17 [Removed]**

**§100X.19 Commercial food processing establishment.**

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products, and has no other disposition of fluid milk products other than in consumer type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, provisions in §§100X.13 and 100X.52.

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**CLASSIFICATION OF MILK**

**§100X.40 Classes of utilization.**

Except as provided in §100X.42, all skim milk and butterfat required to be reported pursuant to §100X.30 shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in paragraphs (a)(2), (b) and (c) of this section;

(2) Used to produce fluid milk products modified in volume by the addition of nonmilk ingredients and/or previously processed and priced skim milk and butterfat, including milkshake and milkshake drinks sold in containers less than one half gallon;

~~(2)~~(3) In packaged fluid milk products in inventory at the end of the month; and

(4) In shrinkage assigned pursuant to §100X.43(b); and

~~(3)~~(5) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk* shall be all skim milk and butterfat:

~~(1) Disposed in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;~~

~~(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;~~

~~(3)~~(1) In bulk fluid milk products in containers larger than 1 gallon and bulk fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of

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**CLASSIFICATION OF MILK**

**§100X.40 Classes of utilization.**

Except as provided in §100X.42, all skim milk and butterfat required to be reported pursuant to §100X.30 shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in paragraphs (a)(2), (b) and (c) of this section;

(2) Used to produce fluid milk products modified in volume by the addition of nonmilk ingredients and/or previously processed and priced skim milk and butterfat, including milkshake and milkshake drinks sold in containers less than one half-gallon;

(3) In packaged fluid milk products in inventory at the end of the month;

(4) In shrinkage assigned pursuant to §100X.43(b); and

(5) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial

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the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

~~(4)~~(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, cream cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in ~~one quart~~ half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) ~~Eggnog~~, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use ~~(meal replacement)~~ that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; ~~and~~

(vii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

~~(vii)~~(viii) Any product not otherwise specified in this section; and

~~(5)~~(3) In shrinkage assigned pursuant to §100X.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

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food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, cream cheese and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(vii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(viii) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to §100X.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

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(1) Used to produce:

(i) ~~Cream cheese and other spreadable cheeses, (other than cream cheese),~~ and hard cheese of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(2)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat, and butteroil;

(iii) Any milk product in dry form ~~except nonfat dry milk;~~

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; ~~and~~

(2) In inventory at the end of the month of ~~unconcentrated~~ fluid milk products and fluid cream products in bulk form ~~and products specified in paragraph (b) (1) of this section in bulk form;~~

(3) ~~In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4)(i) through (iv) of this section, that are disposed of by a handler for animal feed;~~

(4) ~~In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4)(i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;~~

(5)(3) ~~In fluid milk any products classified pursuant to paragraphs (a) or (b) of this section and products specified in paragraph (b)(1) of this~~

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(1) Used to produce:

(i) Spreadable cheeses, (other than cream cheese), and hard cheese of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(2)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat, and butteroil;

(iii) Any milk product in dry form;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In any products classified pursuant to paragraphs (a) or (b) of this section that are destroyed or lost by a handler in a vehicular

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~~section~~ that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

~~(6)(4) In the skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to §1007.15 and the fluid cream product definition pursuant to §1007.16; and equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and~~

~~(7)(5) In shrinkage assigned pursuant to §100X.43(b) §100X.41(a) to the receipts specified in §100X.41(a)(2) and in shrinkage specified in §100X.41(b) and (c):~~

~~(d) Class III-A milk shall be all skim milk and butterfat used to produce nonfat dry milk any milk product in dry form.~~

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accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(4) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(5) In shrinkage assigned pursuant to § 100X.43(b).

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**§100X.41 Shrinkage:**

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §100X.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in §100X.9(c), except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

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Shrinkage provision is included in § 100X.43.

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~~(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;~~

~~(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and~~

~~(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and~~

~~(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amount of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and~~

~~(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to §100X.9(b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.~~

**§100X.42 Classification of transfers and diversions.**

*(a) Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:

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**§ 100X.42 Classification of transfers and diversions.**

*(a) Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:



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(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the ~~transferee~~ receiving-plant after the computations pursuant to 100X.44(a)(~~12~~)(9) and the corresponding step of 100X.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the ~~transferor~~ transferring-plant received during the month other source milk to be allocated pursuant to 100X.44(a)(~~7~~)(3) or the corresponding step of 100X.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the ~~transferor~~ transferring-handler received during the month other source milk to be allocated pursuant to 100X.44(a)(~~14~~)(8) or (~~12~~)(9) or the corresponding steps of 100X.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the ~~transferee~~ receiving-plant.

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(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to 100X.44(a)(9) and the corresponding step of 100X.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferring plant received during the month other source milk to be allocated pursuant to 100X.44(a)(3) or the corresponding step of 100X.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to 100X.44(a) (8) or (9) or the corresponding steps of 100X.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

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(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1); or (2); ~~or~~ (3) of this section: :

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order (~~including allocation under the conditions set forth in paragraph (b)(3) of this section~~); However

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as ~~Class II or Class III~~ other than Class I milk to the extent ~~of~~ that such utilization is available for such classification pursuant to the allocation provisions of the other order; and

(4)(3) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I subject to adjustment when such information is available; :

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(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order. However, if the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order; and

(3) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

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(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of §100X.40:

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any another Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product to an exempt plant. For this purpose, the ~~transferee's~~ receiving-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, ~~respectively~~, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

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(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

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(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The ~~transfer or transferring~~-handler or ~~divert or diverting~~-handler claims such classification in such handler's report of receipts and utilization filed pursuant §100X.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

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(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization ,excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to §100X.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

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(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the ~~transfer~~ receiving plant, shall be classified to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to ~~Class II~~ Class III utilization, and then to ~~Class III~~ Class II utilization at such nonpool plant;

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(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

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(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining ~~Class II~~ Class III utilization, then to any remaining ~~Class III~~ Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

~~(e) Transfers by a handler described in §100X.9(c) to pool plants. Skim milk and butterfat transferred in the form of bulk milk by a handler described in §100X.9(c) to another handler's pool plant shall be classified pursuant to §100X.44 pro rata with producer milk received at the transferee handler's plant.~~

**§100X.43 General classification rules.**

In determining the classification of producer milk pursuant to §100X.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §100X.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to §100X.9(b) ~~or (c) that was not received at a pool plant,~~ the pounds of skim milk and butterfat, respectively, in each class in accordance with §§100X.40; ~~100X.41, and 100X.42, and paragraph (b) of this section.~~ The combined pounds of skim milk and butterfat so determined in each class for a handler described in §100X.9(b) or (c) shall be such handler's classification of producer milk;

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(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

**§100X.43 General classification rules.**

In determining the classification of producer milk pursuant to §100X.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to §100X.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to §100X.9(c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§100X.40 and 100X.42, and paragraph (b) of this section.

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(b) For purposes of classifying all milk reported by a handler pursuant to § 100X.30, the market administrator shall:

(1) Determine the shrinkage or overage of skim milk and butterfat for each pool plant and for each handler described in § 100X.9 (c) by subtracting total utilization from total receipts. Any positive difference would be shrinkage, and any negative difference would be overage;

(2) Prorate the shrinkage or overage computed in paragraph (b)(1) of this section to the respective quantities of skim milk and butterfat reported in each class; and

(3) Add the prorated shrinkage to, or subtract the prorated overage from, the handler's reported utilization. The results shall be known as the gross utilization in each class.

~~(b)~~(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

~~(e)~~(d) The classification of producer milk for which a cooperative association is the handler pursuant to §100X.9~~(b)~~ or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; ~~and~~

~~(d)~~(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignment under §100X.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §100X.44 on a pro rata basis unless a specific use of such receipts is established by the handler; ~~and~~

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**(New paragraph replacing §100X.41)**

(b) For purposes of classifying all milk reported by a handler pursuant to § 100X.30, the market administrator shall:

(1) Determine the shrinkage or overage of skim milk and butterfat for each pool plant and for each handler described in § 100X.9(c) by subtracting total utilization from total receipts. Any positive difference would be shrinkage, and any negative difference would be overage;

(2) Prorate the shrinkage or overage computed in paragraph (b)(1) of this section to the respective quantities of skim milk and butterfat reported in each class; and

(3) Add the prorated shrinkage to, or subtract the prorated overage from, the handler's reported utilization. The results shall be known as the gross utilization in each class.

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) The classification of producer milk for which a cooperative association is the handler pursuant to §100X.9(c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(e) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under §100X.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under §100X.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

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~~(e) Class III-A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III-A shall be determined by prorating receipts from pool sources to Class III-A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.~~

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**§100X.44 Classification of producer milk.**

For each month the market administrator shall determine for each handler described in §100X.9(a) for each pool plant of the handler separately and for each handler described in §100X.9(c) the classification of producer milk and milk received from a handler described in §100X.9(c), by allocating the handler's receipts of skim milk and butterfat to the gross utilization of such receipts pursuant to §100X.43(b)(3) by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

~~(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in §100X.41(b);~~

~~(2)~~(1) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

~~(3)(iii) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows: and~~

~~(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and~~

~~(ii) From Class I milk, the remainder of such receipts;~~

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**§100X.44 Classification of producer milk.**

For each month the market administrator shall determine for each handler described in §100X.9(a) for each pool plant of the handler separately and for each handler described in §100X.9(c) the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the gross utilization of such receipts pursuant to §100X.43(b)(3) by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from other order plants; and

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(iv) The remaining skim milk shall be allocated pursuant to paragraph (3)(iv) of this section.

~~(4)(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in §100X.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;~~

~~(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in §100X.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;~~

~~(6)(i) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in §100X.40(b) in Class II (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §100X.40(c)(6)(4)), but not in excess of the pounds of skim milk remaining in Class II; and~~

(ii) The remaining skim milk shall be allocated pursuant to paragraph (3)(iv) of this section.

~~(7)(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:~~

~~(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product); and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in §100X.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;~~

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(iv) The remaining skim milk shall be allocated pursuant to paragraph (3)(iv) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in:

(i) The pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class III milk pursuant to §100X.40(c)(4)); and

(ii) The remaining skim milk shall be allocated pursuant to paragraph (3)(iv) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in the series beginning with Class III, the pounds of skim milk in:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

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~~(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established; Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;~~

~~(iii) Receipts of fluid milk products from unidentified sources;~~

~~(iv)(iii) Receipts of fluid milk products and bulk fluid cream products from a producer-handler as defined under this or any Federal milk order and from an exempt distributing plant; and~~

~~(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and~~

~~(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is fully regulated under any Federal milk order providing for individual handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;~~

~~(iv) Any receipts not subtracted pursuant to paragraphs (a)(1) and (a)(2) of this section.~~

~~(8)(4) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:~~

~~(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not previously subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of in this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined; .~~

~~(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii)(A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the~~

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(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from a producer-handler, as defined under this or any other Federal order, and from an exempt plant; and

(iv) Any receipts not subtracted pursuant to paragraphs (a)(1) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, the receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

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pounds of skim milk remaining in such classes; the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(5) Subtract from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs; and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) through (iii) of this section;

~~(A)(i)~~ Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step ~~at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);~~

~~(B)(ii)~~ Subtract from the above result the ~~sum of the~~ pounds of skim milk in receipts ~~at all pool plants of the handler~~ of producer milk, ~~milk from a handler described in §100X.9(c), and~~ fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

~~(C)(iii)~~ Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining pursuant to this allocation step ~~at all pool plants of the handler; and.~~

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(5) Subtract from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, receipts of fluid milk products from an unregulated supply plant that were not subtracted in previous paragraphs, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) through (iii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step;

(ii) Subtract from the above result the pounds of skim milk in receipts of producer milk and fluid milk products from pool plants of other handlers; and

(iii) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants remaining at this pool plant is of all such receipts remaining pursuant to this allocation step.

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~~(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;~~

(6) Subtract from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

~~(9)(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and bulk fluid cream products specified in §100X.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(1)(ii), (a)(5), and (a)(7)(i)(3)(iv) of this section;~~

~~(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;~~

~~(11)(8) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(7)(v), (a)(8)(i), and (a)(8)(iii) (a)(1) and (a)(5)~~

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(6) Subtract from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(1)(ii) and (a)(3)(iv) of this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step:

(i) The quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II; and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(1) and (a)(5) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk

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of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received: .

~~(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and~~

~~(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;~~

~~(12)(9) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section: .~~

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products to be allocated at this step were received.

(9) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant;

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(i) Subject to the provisions of paragraphs ~~(a)(12)(ii), (iii) and (iv) of this section~~, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to §100X.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step ~~at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);~~ .

~~(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;~~

~~(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and~~

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(i) Subject to the provisions of this paragraph, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to §100X.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step.

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(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

~~(13)~~(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to §100X.42(a); ~~and~~.

~~(14)~~ If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in §100X.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk ~~and milk received from a handler described in §100X.9(c)~~ in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to ~~paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section~~ paragraphs (a) and (b) of this section.

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(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to §100X.42(a).

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.



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**Uniform Prices**

**§100X.60 Handler's value of milk for computing the uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in §100X.9(b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk ~~and milk received from a handler described in §100X.9(c)~~ that were classified in each class pursuant to ~~§§100X.43(a) and~~ 100X.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage ~~subtracted from assigned to each class pursuant to §100X.44(a)(14) and the corresponding step of §100X.44(b) 43 (b)(2)~~ by the respective class prices, as adjusted by the butterfat differential specified in §100X.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to §100X.44(a)(9)(7) and the corresponding step of §100X.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to §100X.43(d)(e) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §100X.44(a)(7)(3)(i) through (iv)(iii) and the corresponding step of §100X.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

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**Uniform Prices**

**§100X.60 Handler's value of milk for computing the uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in §100X.9(c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk that were classified in each class pursuant to 100X.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage assigned to each class pursuant to 100X.43 (b)(2) by the respective class prices, as adjusted by the butterfat differential specified in §100X.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to §100X.44(a)(7) and the corresponding step of §100X.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to §100X.43(e) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §100X.44(a)(3)(i) through (iii) and the corresponding step of §100X.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

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~~(e)~~ Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to §100X.44(a)(7)(v) and (vi) and the corresponding step of §100X.44(b);

~~(f)~~~~(e)~~ Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §100X.43~~(d)~~~~(e)~~ and §100X.44(a)(7)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §100X.44(a)(11)(8) and the corresponding step of §100X.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

~~(g)~~~~(f)~~ Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to §100X.43~~(d)~~~~(e)~~;

~~(h)~~~~(g)~~ Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under §100X.76(a)(5) or (c); and

**REVISED ORDER LANGUAGE**

(e) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to §100X.43(e) and §100X.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to §100X.44(a)(8) and the corresponding step of §100X.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(f) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to §100X.43(e);

(g) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under §100X.76(a)(5) or (c); and

***MODIFIED***  
***CURRENT ORDER LANGUAGE***

~~(f)~~(h) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the ~~transfer~~ receiving plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

***REVISED ORDER LANGUAGE***

(h) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the receiving plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.